



Record Clearance in NY

Your past should not define your future

Emma Goodman and Sunny Jo
Attorneys in the Case Closed Project at The Legal Aid Society





WHY ARE WE HERE?

Perpetual Punishment



Over 70 million Americans have a criminal record

Having a criminal record can prevent you from accessing jobs, licensing, housing and educational opportunities long after you have completed your sentence.

Getting your record sealed, vacated or expunged can help to lift some of those barriers so that you can fully participate in your community and support yourself and your family.

Record Clearance is about Racial and Economic Justice

Racial Justice

The vast majority of people that are arrested and incarcerated in New York are Black or Latinx + People of color are far more likely to be discriminated against based on a conviction record.



Economic Justice

People who have been to prison lose an average of \$484,400 in earnings over their lifetime. That changes if they get their record cleared.

You may have options!

The Current Record Clearance Laws for Conviction Records in New York State:

- Application-based Sealing
- Application-based Vacatur and Resentencing
- Applications for Clemency
- Automatic Expungement

The Main Record Sealing Law: CPL 160.59

- Went into effect October 2017
- Broadest sealing bill ever passed in NYS
- Many misdemeanor and felony offenses are eligible
- According to DCJS - 2,498 people had convictions sealed as of Feb 2021

CPL 160.59 Eligibility Guidelines

You can **apply to seal**:

- Up to 2 convictions total if you:
 - Have a maximum of 2 convictions in your lifetime
 - Have a maximum of 1 felony conviction in your lifetime that is not a violent felony, Class A felony or a sex offense
 - Your convictions are more than 10 years old (start counting from when you were sentenced or when you were released from incarceration on your most recent case)
 - Have no open cases

*Violent felonies, Class A felonies, sex offenses, and attempts to commit excluded felonies are all not eligible for sealing.

What do I need to include in my 160.59 application?

- Required
 - Certificate of Disposition
 - A sworn statement of reasons why sealing should be granted
- Encouraged - supporting documentation

Submitting the application

- Serve prosecutor's office
- File application with the court
- Prosecutor has 45 days to object
- Court may hold a hearing

Court may consider many factors

- How much time has passed since conviction
- Circumstances and seriousness of conviction
- Any measures taken toward rehabilitation (completion of programs, work, school, volunteer work, etc)
- How sealing will affect your successful reentry
- How sealing can impact public safety

The Drug Record Sealing Law: CPL 160.58

- You can apply to seal one conviction, plus up to 3 other prior drug related misdemeanor offenses
- Eligible offense includes drug offenses (misdemeanor and felony) and a limited number of non-drug offenses
- Must have completed a court-mandated treatment program
- Must have also completed any sentence imposed by the court

Applying to vacate Marijuana convictions Under CPL § 440.46-a

The new marijuana legalization law allows you to apply to vacate your conviction or get your sentence reduced if you have a conviction that is not already eligible for automatic expungement

Convictions that are eligible:

→ **PL 221. 25, PL 221.30, PL 221.45, PL 221.50, PL 221.55 IF under 100 lbs.**

*Convictions that are expunged are eligible BUT unless you are advised by an immigration lawyer to file a 440 motion to vacate your conviction YOU DO NOT NEED TO APPLY TO VACATE YOUR CONVICTION FOR SOMETHING THAT WAS AUTOMATICALLY EXPUNGED.

Other types of Record Clearance?

- Clemency and other types of vacatur applications may be options
- in very specific cases, but they are very complicated and much
- harder.

You should only consider these if other options aren't available
OR if you have immigration concerns that will not be addressed by
other options.

Consult with a lawyer if you want to know more.



Automatic Expungement for Marijuana and Loitering Convictions

Marijuana Legalization created Automatic Expungement for certain convictions. This means no applications and no need for a lawyer to get your record expunged!

Who is eligible for automatic expungement?

Anyone that has a conviction for an eligible offense.

This generally means all convictions for possessing up to 16 oz. or selling up to 3 oz. of marijuana, but check the specific Penal Law offense you were convicted of to be sure.


Convictions that will be automatically expunged:


Old offenses: **PL 221.05, PL 221.10, PL 221.15, PL 221.20, PL 221.35, PL 221.40, PL 240.36, PL 240.37, and PL 220.03 or 220.06** IF the sole controlled substance was concentrated cannabis


New offenses: **PL 222.10, PL 222.15, PL 222.25, PL 222.45**


*There are NO RESTRICTIONS on eligibility. It does not matter if you have other convictions, if you are currently incarcerated or if you didn't pay a fine.

What Does Expungement Mean?

 Expungement means that your case is vacated, dismissed and "deemed a nullity." It's like any other case that was dismissed.

 If you are asked about whether you have a conviction record on a job application and your case has been expunged, you can answer "no."

 Your case should not show up on a background check and should not be used against you, including in employment, licensing, housing and ACS proceedings.

 Exceptions: Expunged records can still be seen when you are applying for a gun license or a job as a peace or police officer.

What about Record Destruction?

If you are eligible for automatic expungement, you may also request that the physical records from your case be destroyed.


THIS COULD BE DANGEROUS. Please consult with an attorney before requesting the physical destruction of your records.

Reasons you may still need a lawyer

- ➔ **If you are not a US citizen, you may still need to file an application to have your conviction vacated (more on that in the next section).**
- ➔ **If you have a marijuana conviction that is NOT eligible for automatic expungement, you may still be eligible to vacate your conviction or reduce your sentence.**
- ➔ **If you are considering requesting the physical destruction of your records.**
- ➔ **If you are looking to seal or expunge a conviction for something else, you may have other options!**

How do I know what is on my record?

- The most reliable way to find out what is on your conviction record is to request a rap sheet
- You will need to have your fingerprints taken at a fingerprinting facility near you
- Once DCJS receives your request, they will send you your rap sheet by mail
- You can go to this website to find out more information -
<https://www.criminaljustice.ny.gov/ojis/recordreview.htm#personalrecordreview>



****You can send us your rap sheet and we will review it to see what you're eligible for and if you need a lawyer.**

What if you're not eligible for relief right now?

Soon we hope to pass Clean Slate!!



When the Clean Slate Act passes, it will bring automatic sealing to millions of New Yorkers

You will be eligible if:

- You meet the waiting period and don't have any new convictions
- You are not currently incarcerated
- You are not on probation or parole
- Your conviction is not a sex offense

Waiting Periods:

- 3 years for misdemeanors
- 7 years for felonies
(time starts counting when you are released from incarceration)



THE TAKEAWAY

If you have a conviction record that is holding you back, you may have options! We can help you figure out your options.

Here's what you should do:

1. Get a copy of your RAP sheet.
2. Send it to us for review.
3. We will help you to figure out your best options.

Have Questions? Contact Us

We represent people that are eligible for Legal Aid services free of charge in CPL 160.59 and CPL 160.58 sealing applications. We can also review your rap sheet and help you to determine what type of relief you are eligible to receive.

- E-mail: CaseClosed@legal-aid.org, Phone: 212-298-3120
- Go to our website for resources and information: <https://legalaidnyc.org/case-closed>
- Social Media: @CaseClosedNYC and @LegalAidNYC
- To get involved with the Clean Slate NY campaign, go to: <https://www.cleanslateny.org/take-action>

Q & A